

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JANNA CLAY, NANCY CLAY, and
MEREDITH BROWN as next friend of
M.C., A MINOR,

Plaintiffs,

VS.

PALFINGER USA, LLC and MACK
TRUCKS, INC.

Defendants,

$\S \S$

CIVIL ACTION NO. 1:20-cv-00111

JURY DEMAND

DEFENDANT MACK TRUCKS, INC.'S NOTICE OF REMOVAL

Defendant MACK TRUCKS, INC. (“Mack Trucks”) files this Notice of Removal pursuant to 28 U.S.C. §§1332, 1441 & 1446 and other applicable statutes, rules and law, respectfully showing:

I. CASE BACKGROUND/PROCEDURAL

1. This is a wrongful death lawsuit arising from a workplace accident and the subsequent death of Cody Clay.

2. Plaintiffs Janna Clay, Nancy Clay, and Meredith Brown (as next friend of M.C., a minor) (collectively, “Plaintiffs”) filed their original state court petition against defendants Palfinger USA, LLC and Mack Trucks, Inc. on January 3, 2020 in the 421st Judicial District Court of Caldwell County, Texas, numbered and styled Cause No. 20-O-008; *Janna Clay, Nancy Clay, and Meredith Brown as next friend of M.C., a minor v. Palfinger USA, LLC and Mack Trucks,*

*Inc.*¹

3. In their original petition, Plaintiffs are asserting state-law claims against these defendants common-law negligence, strict product liability, breach of warranty, and negligent undertaking theories.² They are seeking over \$1,000,000 in damages in connection with their claims and the injuries to/death of Cody Clay³ -- including damages for medical expenses, loss of earnings and benefits (past and future), physical incapacity and impairment to the decedent, mental anguish, physical pain and suffering suffered by the decedent, and “extreme disfigurement” that the decedent suffered between the date of the accident and his death.⁴ They also allege that defendant Palfinger USA, LLC, is a Delaware company with its principal place of business in Ohio⁵, and that defendant Mack Trucks is “a corporation organized and existing under the laws of the state of Pennsylvania” without alleging where Mack Trucks’ principal place of business is located.⁶

4. Mack Trucks was served with citation (through its registered agent in Texas) on January 14, 2020.⁷

5. Mack Trucks filed its motion to transfer venue and original answer in the state court action on January 31, 2020.⁸

6. Palfinger USA, LLC has not filed a special appearance, original answer, or other pleading constituting an appearance or answer in the state court action as of the time this notice of

¹ See Plaintiffs’ Orig. Pet. (*filed in state district court*, Jan. 3, 2010) (Exhibit A).

² See *id.* at ¶¶7–16.

³ See *id.* at ¶2.

⁴ See *id.* at [sic] ¶¶15(a)–(f).

⁵ See *id.* at ¶6.

⁶ See *id.* at ¶6.

⁷ See Citation (Exhibit B).

⁸ See Defendant Mack Trucks, Inc.’s Motion to Transfer Venue and, Subject Thereto, Original Answer (Exhibit C).

removal is being filed.

7. Pursuant to 28 U.S.C. §1446(b) of the Federal Rules of Civil Procedure, this Notice of Removal is timely filed within 30 days of the date when Mack Trucks was first served with the initial state court pleading.

8. True and correct copies of all pleadings, process, orders, and other filings in the state court action are being filed along with this notice of removal as required by 28 U.S.C. §1446(a). Pursuant to 28 U.S.C. §1446(d), written notice of this removal is being *(i)* served on Plaintiffs, and *(ii)* filed in the state court action.

II. BASIS FOR REMOVAL (DIVERSITY OF CITIZENSHIP)

9. This action is within the original jurisdiction of the United States District Court pursuant to 28 U.S.C. §1332(a)(1) because “the district courts shall have the original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

10. The amount in controversy in this wrongful death case greatly exceeds \$75,000, exclusive of interest and costs.

11. Additionally, this action satisfies the statutory requirements for diversity of citizenship jurisdiction. This civil action involves a controversy between citizens of different states:

a. Plaintiffs all reside in Texas and are therefore citizens of the State of Texas for diversity purposes⁹;

b. Defendant Mack Trucks is now, and was at the commencement of this action and

⁹ See Plaintiffs’ Orig. Pet. (Exhibit A) at ¶¶3-5.

all intervening times, a corporation incorporated in Pennsylvania with its principal place of business (center of operations) located in Greensboro, North Carolina, and thus is not a citizen of Texas for federal diversity jurisdiction purposes; and

- c. Defendant Palfinger USA, LLC is a Delaware limited liability company which maintains its principal place of business (center of operations) in Ohio, and is also thus not a citizen of Texas for federal diversity jurisdiction purposes.

There is no “local defendant” (*i.e.*, citizen of Texas) named as a defendant in this suit, and complete diversity exists.

12. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the state court action is pending is located in the Western District of Texas. Venue is also proper in this district and division because, according to the Plaintiffs’ own petition, the accident made the basis of this lawsuit occurred in Williamson County, Texas.

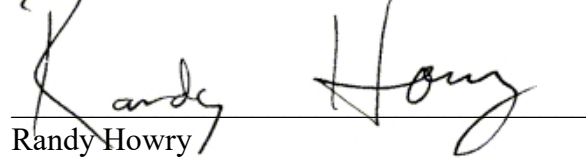
III. CONCLUSION AND PRAYER

For the reasons described above, this action is properly removable under 28 U.S.C. §§1332, 1441 & 1446 on federal diversity-of-citizenship grounds. Removing party Mack Trucks respectfully requests that this Court proceed with this matter as if it had originally been filed herein. Mack Trucks further requests any such other relief to which it may be justly entitled.

Dated: January 31, 2020

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

Handwritten signatures of Randy Howry and John E. Carlson. Randy Howry's signature is on the left, and John E. Carlson's signature is on the right. Both signatures are written in black ink and are positioned above a horizontal line.

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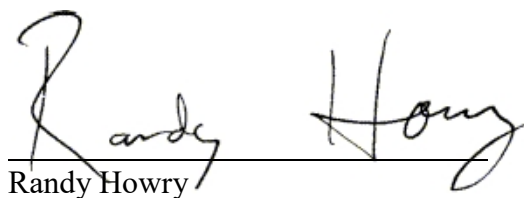
Attorneys for Defendant Mack Trucks, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing document was filed electronically with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court on January 31, 2020. The electronic case filing system sends a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.

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